

**Amendment and Response**

Applicant: Jerry Rolia et al.

Serial No.: 10/698,769

Filed: October 31, 2003

Docket No.: 200300266-1

Title: METHOD AND SYSTEM FOR GOVERNING ACCESS TO COMPUTING UTILITIES

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**REMARKS**

The following remarks are made in response to the Office Action mailed January 23, 2009. Claims 1-27 were rejected. With this Response, claims 1, 14 and 27 have been amended. Claims 1-27 remain pending in the application and are presented for reconsideration and allowance.

**Claim Rejections under 35 U.S.C. § 101**

The Examiner rejected claims 1-13 under 35 U.S.C. § 101 asserting that the claimed invention is directed to non-statutory subject matter. The Examiner also rejected claim 27 under 35 U.S.C. § 101 asserting that the claimed invention is directed to non-statutory subject matter.

With this response, Applicants have amended both claim 1 and claim 27 to incorporate hardware, such as a processor, which is proper statutory subject matter. Therefore, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. § 101 rejection to the claims, and request allowance of these claims.

**Claim Rejections under 35 U.S.C. § 102**

The Examiner rejected claims 1, 14, and 27 under 35 U.S.C. § 102(e) as being anticipated by the Clohessy et al. U.S. Patent No. 7,334,228. The Examiner rejected also claims 1-2, 5-6, 8-15, 18-19, and 21-27 under 35 U.S.C. § 102(e) as being anticipated by the Brelin U.S. Patent No. 6,647,448. Applicant respectfully disagrees that the present claims as amended are taught or suggested in the art of record.

As amended, claim 1 is a method of governing access to resources in a computing utility facility. The method includes providing a processor for receiving a demand profile associated with an application that identifies the resources required from *a pool of resources in the computing utility facility* during one or more demand cycles. An application is admitted to the computing utility facility if resources required for the application can be provided from the pool of resources in accordance with the demand profile and associated one or more demand cycles. Available resources are assigned from the pool of resources in response to a request from the applications admitted to the computing utility facility. The art of record fails to teach or suggest this.

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Neither the Clohessy nor the Brelin reference teach or suggest anything about a pool of resources in a computing utility facility, much less identifying them or governing access thereto. As described the specification, a computing utility facility is a collection of processors and servers that is accessed by multiple customers so that they can avoid having to each have their own individual computer resources:

In a utility computing environment, utilization is improved by increasing the availability of servers and other computing resources to more people and their applications. Instead of sitting idle for a single application, these resources are used to execute programs for many users. Information technology infrastructure costs are reduced as computer resources are not purchased to only solve a single complex task for a department or division in a company. See, specification page 2, lines 1-7.

Computing utility facilities include resource pools, including pools of storage devices, pools of processors and pools of specialty processors, which are accessible to the customers for utilization by them:

Resource pools 114, 116 and 118 include a range of resources including resource 122 to resource 124, resource 126 to resource 128 and resource 130 to resource 132 respectively. Each range of resources may include one or more different resources arranged in different organizational schemes as appropriate for the particular customers/applications being served and as required logistically by the system setup. For example, resources can be pooled according to the type of resource (i.e., pools of storage devices, pools of processors, pools of graphics rendering processors or pools of network nodes), the quality of the resources, (i.e., pools of high-availability devices and pools of medium reliability devices or low-cost devices) or any other logical method of grouping the resources. See, specification page 6, lines 14-23.

There is simply no teaching or suggestion in either the Clohessy or the Brelin reference of computing utility facility, there is no teaching or suggestion of accessible resource pools, nor is there teaching or suggestion of pools of storage devices, pools of processors or pools of specialty processors. The Clohessy reference simply teaches a resource management strategy for a *personal portable device* (see, Abstract). The Brelin reference simply teaches managing access to a scheduling bulletin board (see, Abstract). There is nothing suggesting a computing utility facility in either case. Because this feature of the claims is simply lacking in the art of record, the claims are allowable over it.

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Furthermore, claim 14 has been clarified to specify that the pool of resources includes at least a plurality of resources from the group comprising *storage devices, processors, graphics rendering processors and network nodes*. Again, there is simply no teaching or suggestion of this feature in the art of record.

Because claims 1, 14 and 27, and thus the dependent claims as well, include a pool of resources in a computing utility facility and this feature is not taught or suggested in the art of record, it is believed that the claims are in condition for allowance. Therefore, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. § 102(c) rejection to the claims, and request allowance of these claims.

**Claim Rejections under 35 U.S.C. § 103**

The Examiner rejected claims 3-4 and 16-17 under 35 U.S.C. § 103(a) as being unpatentable over the Brelin U.S. Patent No. 6,647,448 in view of the Funke et al. U.S. Patent No. 5,845,201. The Examiner also rejected claims 7 and 20 under 35 U.S.C. § 103(a) as being unpatentable over the Brelin U.S. Patent No. 6,647,448 in view of the Contestabile U.S. Patent No. 7,123,141.

Because these claims depend from claims 1, 14 or 21, which are believed to be in condition for allowance as discussed above, they too are in condition for allowance. Therefore, Applicants respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection to the claims, and request allowance of these claims.

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**CONCLUSION**

In view of the above, Applicant respectfully submits that pending claims 1-27 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 1-27 is respectfully requested.

No fees are required under 37 C.F.R. 1.16(h)(i). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 08-2025.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to Paul P. Kempf at Telephone No. (612) 767-2502, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

Jerry Rolia et al.,

By their attorneys,

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